

ARTICLE 5
FINANCE, PROPERTY, AND PROCUREMENT

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MINORITY AND WOMEN'S BUSINESS ENTERPRISES

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SUBTITLE 28
MINORITY AND WOMEN'S BUSINESS ENTERPRISES

PART I. DEFINITIONS; GENERAL PROVISIONS

§ 28-1. Definitions — A to H.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated unless the context clearly requires a different meaning.

(b) *African American.*

“African American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the black racial groups of Africa.

(c) *Asian American.*

“Asian American” means a U.S. citizen or lawfully admitted permanent resident who originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(d) *Baltimore City Market Area.*

“Baltimore City Market Area” means Baltimore City, Baltimore County, Anne Arundel County, Howard County, Harford County, Carroll County, and Queen Anne’s County.

(e) *Bid.*

“Bid” means a response to :

- (1) an invitation to bid; or
- (2) a request for proposals.

(f) *Business enterprise.*

“Business enterprise” means a corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity operated for profit that is properly licensed and otherwise authorized to do business in the State of Maryland.

(g) *Certified business enterprise.*

“Certified business enterprise” means a minority or women’s business enterprise that has been certified by the Minority and Women’s Business Opportunity Office as meeting the criteria for certification under this subtitle.

(h) *Chief.*

“Chief” means the Chief of the Minority and Women’s Business Opportunity Office.

(i) *Construction.*

(1) “Construction” means building, altering, repairing, improving, or demolishing any structure, building, street, utility, or other improvement to real property.

(2) “Construction” includes:

(i) building construction;

(ii) heavy construction (road construction and bridge construction); and

(iii) specialty trades construction (e.g., carpentry, electrical, and plumbing).

(j) *Contracting agency.*

“Contracting agency” means the City agency, department, or authorized representative that issues invitations to bid or requests for proposals.

(k) *Contractor.*

“Contractor” means the person, firm, or legal entity with which the City has entered into an agreement.

(l) *Control.*

(1) “Control”, for purposes of determining whether a business is a minority business enterprise or women’s business enterprise, means that the minority group member owners or women owners:

(i) possess and exercise the legal authority and power to manage business assets, goodwill, and daily operations of the business; and

(ii) actively and continuously exercise this managerial authority and power in determining the policies and directing the operations of the business.

(2) If owners who are not minority group members or women are responsible for the operation of the business out of proportion to their ownership interest, then the business is not controlled by minority group members or women.

(m) *Hispanic American.*

“Hispanic American” means a U.S. citizen or lawfully admitted permanent resident of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish or Portuguese culture or origin, regardless of race.

(Ord. 00-098; Ord. 07-606.)

§ 28-2. Definitions — I to Z.**(a) *Includes; including.***

“Includes” or “including” means by way of illustration and not by way of limitation.

(b) *Joint venture.*

“Joint venture” means an association between business enterprises that provides for the sharing of economic interest.

(c) *Manufacturer.*

“Manufacturer” means a business enterprise that:

- (1) produces goods from raw materials or substantially alters or fabricates them before resale; and
- (2) assumes the actual and contractual responsibility for providing the materials and supplies.

(d) *Minority business Enterprise (MBE).*

“Minority Business Enterprise” or “MBE” means a business enterprise:

- (1) that is owned, operated, and controlled by 1 or more minority group members who have at least 51% ownership;
- (2) in which the minority group members have day-to-day operational and managerial control, interest in capital, and risks and earnings commensurate with their percentage of ownership; and
- (3) that is located in the Baltimore City Market Area.

(e) *Minority group member.*

“Minority group member” means a member of a minority group, such as African American, Hispanic American, Asian American, or Native American, for which a utilization disparity has been identified.

(f) *Native American.*

“Native American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the original peoples of North America and who maintains cultural identification through tribal affiliation or other suitable authority in the community.

(g) *Office.*

“Office” means the Minority and Women’s Business Opportunity Office.

(h) *Owned.*

“Owned”, for purposes of determining whether a business is a minority business enterprise or women’s business enterprise, means that:

- (1) the minority group member or female owner, as the context requires, possesses an ownership interest of at least 51% of the business;
- (2) this ownership is real and continuing and goes beyond the mere indicia of ownership reflected in the ownership documents; and
- (3) the minority group member or woman owner enjoys the customary incidents of ownership and shares in the risks and profits commensurate with his or her ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

(i) *Purchasing.*

“Purchasing” means the buying, renting, leasing, or otherwise obtaining or acquiring any supplies, materials, equipment, or services.

(j) *Sole proprietorship.*

“Sole proprietorship” means a business enterprise that is 100% owned, operated, and controlled by 1 individual.

(k) *Subcontractor.*

“Subcontractor” means a business enterprise that has a direct contract with a contractor to perform part of the work on a contract.

(l) *Supplier.*

“Supplier” means a business enterprise that:

- (1) furnishes needed items to a contractor; and
- (2) either:
 - (i) is involved in the manufacture or distribution of the supplies or materials; or
 - (ii) otherwise warehouses and ships the supplies.

(m) *Women’s Business Enterprise (WBE).*

“Women’s Business Enterprise” or “WBE” means a business enterprise:

- (1) that is owned, operated, and controlled by 1 or more women who have 51% ownership;

(2) in which the women have day-to-day operational and managerial control, interest in capital, and risk and earnings commensurate with their percentage of ownership; and

(3) that is located in the Baltimore City Market Area.

(Ord. 00-098; Ord. 07-606.)

§ 28-3. Legislative findings and policy.

(a) Findings.

(1) The Mayor and City Council makes the findings contained in this subsection, on full consideration of:

(i) the extensive findings made by an independent task force prior to the enactment of Ordinance 90-610;

(ii) the evidence of significant levels of utilization disparity identified by the 2000 Disparity Study;

(iii) hearings held by the City Council;

(iv) the extensive findings of the 2007 Disparity Study, "Race, Sex, and Business Enterprise: Evidence from the City of Baltimore"; and

(v) all other relevant facts.

(2) Past discrimination in the City's contracting process by prime contractors against minority and women's business enterprises has resulted in significant underutilization of minority and women's business enterprises in contracts awarded by the City of Baltimore. As determined by the 2007 Disparity Study, this disparity has been persistent, pervasive, and statistically significant based on available vendor data.

(3) This discrimination has occurred in the major City contracting markets (construction, commodities, architectural and engineering, and services), with the effect of significant underutilization of minority and women's business enterprises.

(4) The provisions of this subtitle are necessary to overcome the effects of past discrimination and to prevent ongoing discrimination in the City's contracting process, while assuring that high quality goods and services are obtained through the competitive bidding process.

(5) A general goal of this subtitle is to provide a narrowly tailored remedy to past discrimination, a goal that is advanced by:

(i) setting minority and women's business enterprise goals that are flexible and rationally related to the disparity identified in the City's contracting markets;

(ii) instituting race- and gender-neutral remedies in conjunction with the MBE/WBE Program;

- (iii) setting goals on a contract-by-contract basis;
- (iv) providing criminal penalties for fraudulent misuse of this subtitle;
- (v) requiring regular review of the necessity for this subtitle;
- (vi) limiting those minority and women's businesses that qualify under this subtitle to those located in the Baltimore City Market Area;
- (vii) requiring regular review of the categories included in the definition of minority group members; and
- (viii) providing for post-bid submission of required information about minority and women's business enterprises as well as other subcontractors.

(b) *Policy.*

It is the policy of the City of Baltimore to promote equal business opportunity in the City's contracting process by encouraging full and equitable participation by minority and women's business enterprises in the provision of goods and services to the City on a contractual basis.

(Ord. 00-098; Ord. 07-606.)

§ 28-4. Scope of subtitle.

(a) *In general.*

This subtitle applies to all contracts awarded by the City.

(b) *Third-party contracts.*

Every contract or other agreement between the City of Baltimore and any governmental agency, quasi-governmental agency, corporation, developer, or contractor, under which the agency, corporation, developer, or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance, or other services must require the agency, corporation, developer, or contractor to comply with this subtitle in awarding and administering that contract or agreement.

(Ord. 00-098.)

§ 28-5. Rules of construction.

(a) *Liberal construction.*

The provisions of this subtitle are to be liberally construed to accomplish its policies and purposes.

(b) *Mandatory, prohibitory, and permissive terms.*

(1) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(2) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(3) *Permissive terms.*

“May” is permissive.

(c) *Number.*

The singular includes the plural and vice versa.

(d) *Severability.*

(1) All provisions of this subtitle are severable.

(2) If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances remain in full force and effect to the maximum extent practicable.

(e) *Time computations.*

(1) *Computation of time after an act, event, or default.*

(i) In computing any period of time prescribed by this subtitle, the day of the act, event, or default after which the designated period of time begins to run is not included.

(ii) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.

(iii) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.

(iv) The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Computation of time before a day, act, or event.*

- (i) In determining the latest day for performing an act that is required by this subtitle to be performed a prescribed number of days before a certain day, act, or event, all days preceding that day, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed.
- (ii) The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the first preceding day that is not a Saturday, Sunday, or legal holiday.

(Ord. 00-098.)

§ 28-6. Automatic termination.

This subtitle automatically expires on July 30, 2019, unless the City Council, after causing an appropriate study to be undertaken, conducting public hearings, and hearing testimonial evidence, finds that the purposes identified in this subtitle have not yet been achieved, in which case this subtitle may be extended for 5 more years.

(Ord. 00-098; Ord. 05-010; Ord. 06-356; Ord. 07-472; Ord. 07-524; Ord. 07-606; Ord. 11-557; Ord. 13-130; Ord. 13-188; Ord. 14-215; Ord. 14-265.)

§ 28-7. Short title.

This subtitle may be cited as the “Minority and Women’s Business Program”.

(Ord. 00-098.)

§§ 28-8 to 28-10. {Reserved}**PART II. ADMINISTRATION****§ 28-11. Business Opportunity Office established.**(a) *In general.*

There is a Minority and Women’s Business Opportunity Office in the Department of Law.

(b) *Chief to administer.*

The Office is administered and controlled by the Chief of the Minority and Women’s Business Opportunity Office, who reports directly to the City Solicitor.

(Ord. 00-098.)

§ 28-12. General functions and duties of Office.(a) *In general.*

The Minority and Women’s Business Opportunity Office is responsible for the administration of this subtitle.

(b) *Specific duties.*

The Office's duties include:

- (1) certification of MBEs and WBEs;
- (2) maintaining a directory of certified business enterprises;
- (3) providing information and needed assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;
- (4) investigating alleged violations of this subtitle and, when appropriate, making written recommendations for remedial action;
- (5) developing and distributing all necessary forms, applications, and documents necessary to comply with this subtitle;
- (6) maintaining statistics on and reviewing regularly the progress of agencies towards achieving the annual goals for the utilization of minority and women's business enterprises;
- (7) recommending to appropriate City officials methods to further the policies and goals of this subtitle;
- (8) monitoring contractors throughout the duration of their contracts to ensure that all efforts are made to comply with this subtitle; and
- (9) certifying compliance with this subtitle before contracts are submitted to the Board of Estimates for award.

(Ord. 00-098; Ord. 00-118.)

§ 28-13. Rules and regulations.

(a) *In general.*

The Office may adopt rules and regulations to carry out this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(Ord. 00-098.)

§ 28-14. Board of Estimates' authority.

(a) *Authority of Board not abrogated.*

Nothing in this subtitle abrogates the authority of the Board of Estimates to award contracts under Article VI, § 11 of the City Charter.

(b) *Board may waive minor defects.*

At its discretion, the Board of Estimates may waive minor defects and errors in a bidder's MBE or WBE submission.

(Ord. 00-098.)

§ 28-15. {Reserved}

PART III. ANNUAL PARTICIPATION GOALS

§ 28-16. Establishment.

Annually, the Board of Estimates, with the advice of the Minority and Women's Business Opportunity Office, must review and establish the participation goals for Minority Business Enterprises and for Women's Business Enterprises.

(Ord. 00-098; Ord. 07-606.)

§ 28-17. Purpose.

(a) *In general.*

The purpose of the annual goals is to aid the City in its annual evaluation of the Program's effectiveness.

(b) *Goals, not quotas.*

Annual participation goals are not and may not be quotas.

(Ord. 00-098; Ord. 07-606.)

§§ 28-18 to 28-20. {Reserved}

PART IV. CONTRACT PARTICIPATION GOALS

§ 28-21. Establishment.

The Minority and Women's Business Opportunity Office must establish appropriate MBE and WBE participation goals on each specific contract, as provided in this Part IV.

(Ord. 00-098.)

§ 28-22. Considerations.

(a) *In general.*

In setting the goals on a contract, the Office must consider:

- (1) the availability in various industry classifications and professions of MBEs and WBEs that are qualified and willing to provide goods, expertise, and services on the particular contract;

- (2) the level of utilization of these firms in past contracts awarded by the City;
- (3) the contract specifications;
- (4) the adverse impact on non-MBEs and -WBEs; and
- (5) any other relevant factors.

(b) *Minimum availability.*

{Repealed by Ord. 14-265.}

(c) *Construction contracts of \$1,000,000 or more.*

On construction contracts for which the estimated cost is \$1,000,000 or more, the Office may, in consultation with the contracting agency, set goals for MBEs divided into subgoals for African American-, Hispanic American-, Asian American-, or Native American-owned firms.

(d) *Architectural or engineering contracts.*

On architectural or engineering contracts, the Office may, in consultation with the contracting agency, set goals for MBEs divided into subgoals for African American-, Hispanic American-, Asian American-, or Native American-owned firms.

(e) *Consultation.*

In establishing goals on each contract, the Office must consult with the contracting agency, the City Purchasing Agent, or both.

(Ord. 00-098; Ord. 07-606.)

§ 28-23. Publication.

The contract goals must be clearly published as part of the contract specifications in the invitation to bid or request for proposals.

(Ord. 00-098.)

§ 28-24. Applicability to alternates, modifications, etc.

The contract goals apply to the initial contract amounts, to any alternates, and to all subsequent amendments, supplements, extra work orders, change orders, or other modifications that, whether individually or in the aggregate, increase the dollar value of the contract by more than 10%.

(Ord. 00-098.)

§ 28-25. Office review and report.

(a) *Office to evaluate.*

Annually, the Office must review MBE and WBE participation on all contracts and procurement to evaluate the effect of the Program and the City's progress towards meeting the annual goals.

(b) *Report to Board of Estimates.*

The Office must report its findings to the Board of Estimates.
(Ord. 00-098; Ord. 07-606.)

§§ 28-26 to 28-30. {Reserved}

PART V. COUNTING MBE AND WBE PARTICIPATION

§ 28-31. In general.

(a) *Part governs.*

MBE and WBE participation toward meeting contract goals must be counted in accordance with this Part V.

(b) *Dual certification.*

A business that is certified both as an MBE and a WBE may be counted towards either the MBE or the WBE contract goal, but not towards both. The participation of the certified firm cannot be split between the MBE goal and the WBE goal.

(c) *Payment required.*

Participation of an MBE or WBE subcontractor cannot be counted towards the goal until the amount being counted has been paid to the MBE or WBE.

(d) *Credit for self performance.*

(1) Subject to limitation in paragraph (2) of this subsection, a certified MBE or WBE that has been awarded a contract as a prime contractor may count up to 50% of the dollar value of the work it intends to perform with its own forces towards the applicable MBE or WBE goal.

(2) The amount of the credit may not exceed the MBE's or WBE's available work capacity calculated in accordance with the contractor prequalification rules established by the Board of Estimates.

(Ord. 00-098; Ord. 07-606; Ord. 14-265.)

§ 28-32. Commercially useful function.

(a) *"Commercially useful function" defined.*

In this section, "commercially useful function" means the performance by a business enterprise of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise.

(b) *Requirement.*

The bidder may count toward the contract goals only expenditures to certified business enterprises that perform commercially useful functions in the execution of the contract.

(c) *Determination.*

(1) To determine whether a certified business enterprise is performing a commercially useful function, the City must evaluate:

(i) the amount of work subcontracted;

(ii) industry practices;

(iii) whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and with the MBE or WBE credit claimed for its performance of the work; and

(iv) other relevant factors.

(2) With respect to materials and supplies used on the contract, the MBE or WBE is responsible for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.

(3) When an MBE or WBE is presumed not to be performing a commercially useful function, the MBE or WBE may present evidence to rebut this presumption. The MBE or WBE must provide written documentation to the Chief, whose decision is final.

(Ord. 00-098; Ord. 07-606.)

§ 28-33. Joint ventures.

(a) *Percentage of participation.*

A bidder may count toward the contract goal the portion of its expenditure to a joint venture that is equal to the percentage of a certified business enterprise's participation in the joint venture.

(b) *Nature and extent of interest.*

The MBE or WBE member of the joint venture must have an interest in the control, management, risks, and operation of the joint venture commensurate with the member's percentage of ownership.

(c) *Share of work responsibility.*

The certified business enterprise that is a member of the joint venture must be responsible for a distinct, clearly defined portion of the work to be performed with its own forces, equal to its share in the ownership, control, and management of the joint venture.

(Ord. 00-098; Ord. 07-606.)

§ 28-34. Subcontracting by MBE or WBE.**(a) *Limitation.***

A bidder may not count toward its contract goal any agreements with certified business enterprise subcontractors who intend to subcontract more than 10% of the dollar amount of the services to be performed under the agreement between the bidder and the certified business enterprise.

(b) *Exception for supplies, etc.*

This section does not apply to a subcontractor's contracts for the purchase of materials, equipment, or supplies as an incident to the performance of services under its contract.

(Ord. 00-098.)

§ 28-35. One subcontractor, one goal.

A business enterprise that is certified as both an MBE and a WBE may not be counted toward both MBE and WBE goals for the same project. The bidder must select the goal for which the business enterprise is to be counted toward.

(Ord. 07-606.)

§ 28-36. Manufacturers.

A bidder may count towards the contract goal its entire expenditure to a certified business enterprise manufacturer.

(Ord. 00-098.)

§ 28-37. Suppliers.**(a) *In general.***

If a bidder uses 1 or more suppliers to satisfy a contract goal, in whole or in part, the certified business enterprise supplier participation may be credited towards the applicable goal, as provided in this section.

(b) *Supplier-manufacturers.*

A bidder may count 100% of its expenditure to a certified business enterprise supplier who manufactures the goods supplied.

(c) *Others.*

(1) A bidder may count 100% of its expenditure to a certified business enterprise supplier who is:

(i) a wholesaler warehousing the goods supplied; or

(ii) a manufacturer's representative,

- (2) However, only 25% of the applicable contract goal may be attained by expenditures to certified business enterprises that are non-manufacturing suppliers.

(d) *Adjustment for extraordinary proportion.*

For contracts where an extraordinarily large proportion of the contract price is for equipment or supplies:

- (1) a lower project goal may be set than otherwise would be required;
- (2) the 25% limit for suppliers may be increased; or
- (3) a combination of these two methods may be used.

(Ord. 00-098.)

§ 28-38. Insurance companies; travel agents.

A bidder may count towards the contract goals the fees or commissions charged by a certified business enterprise insurance company or travel agent, as long as the fee or commission is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.

(Ord. 00-098; Ord. 07-606.)

§ 28-39. Financial institutions.

A bidder may count towards the contract goals only the fees charged and earned by a certified business enterprise financial institution.

(Ord. 00-098.)

§ 28-40. {Reserved}

§ 28-41. Non-affiliation.

(a) *Affiliation disallowed.*

A bidder is precluded from using a certified business enterprise to meet a contract goal if the bidder has a financial interest in, has an interest in the ownership or control of, or is significantly involved in the operation of the certified business enterprise.

(b) *Office criteria to be met.*

In order for a non-certified bidder to use a certified business enterprise to meet a contract goal, the non-affiliation criteria established by the Minority and Women's Business Opportunity Office must be met.

(Ord. 00-098; Ord. 07-606.)

§§ 28-42 to 28-45. {Reserved}

PART VI. UTILIZATION REQUIREMENTS**§ 28-46. Contracts between \$1,000 - \$4,999.*****(a) In general.***

The following standards and procedures apply to every contract for which the estimated cost is \$1,000 or more and less than \$5,000.

(b) Office to provide list of certified enterprises.

The Office must provide the contracting agency with a list of certified business enterprises qualified to provide each of the materials, equipment, supplies, or services that the contracting agency indicates are required by the City.

(c) Agencies to solicit certified enterprises.

The contracting agency must solicit bids from certified business enterprises that are certified to supply the required materials, equipment, supplies, or services.

(d) When certified enterprises unavailable.

If no qualified certified business enterprise is available:

- (1) the contracting agency must so notify the Office before the solicitation of bids; and
- (2) the Office must attempt to identify qualified businesses and, if successful, notify the contracting agency of their availability.

(e) Opportunity to bid.

The contracting agency must provide certified business enterprises every practical opportunity to submit bids.

(Ord. 00-098.)

§ 28-47. Contracts between \$5,000 - \$49,999.***(a) In general.***

The following standards and procedures apply to every contract for which the estimated cost is \$5,000 or more and less than \$50,000.

(b) Agency to provide Office with bid documents.

Before the solicitation of bids, the contracting agency must furnish the Office with an informational copy of all bid conditions and requests for proposals.

(c) *Office may recommend certified enterprises.*

The Office may recommend to the contracting agency certified business enterprises that can be solicited directly to submit bids.

(Ord. 00-098; Ord. 11-557.)

§ 28-48. Contracts of \$50,000 or more.

(a) *In general.*

The following standards and procedures apply to every contract for which the estimated cost is \$50,000 or more.

(b) *Participation affidavit required.*

(1) In addition to any other applicable requirements, the bid conditions and requests for proposals must require each bidder to include in its bid a certified business enterprise participation affidavit in which the bidder commits to utilize certified business enterprises in a percentage that equals or exceeds the applicable contract goals.

(2) Any bid that does not include the certified business participation affidavit is non-responsive.

(c) *Participation affidavit requirements.*

(1) Prior to bid opening, bidders must submit to the City the certified business enterprise participation statement, including executed statements of intent, that specify:

(i) the name of each certified business enterprise to whom the bidder intends to award a subcontract;

(ii) whether that subcontractor is:

(A) a minority business enterprise; or

(B) a women's business enterprise.

(iii) the dollar value of each subcontract;

(iv) the scope of the work to be performed under that subcontract; and

(v) any other information the Office requires to determine whether the contract goals have been satisfied.

(d) *Verifying certification.*

Each bidder is responsible for verifying that all MBEs and WBEs to be used have been certified by the Office before bid opening.

(e) *Maintaining levels during contract term.*

During the term of the contract, any unjustified failure to comply with the levels of certified business enterprise participation identified in the bid is a material breach of contract.

(f) *Report for final payment.*

(1) Before final payment may be made under the contract, the contractor must submit a list of all subcontractors utilized on the contract, both MBE/WBE and non-MBE/WBE.

(2) The list must include, as to each subcontractor:

(i) its name;

(ii) the service or goods provided;

(iii) the total amount paid to it; and

(iv) its owner's race/ethnicity and sex.

(Ord. 00-098; Ord. 07-606; Ord. 11-557.)

§ 28-49. Leases and concessions.

(a) *In general.*

The following standards and procedures apply to:

(1) every lease in which the City is the lessee; and

(2) every contract for a concession.

(b) *Agency to solicit certified enterprises.*

City agencies must solicit bids from certified business enterprises that are certified to enter into leases or concession contracts.

(c) *When qualified enterprises unavailable.*

If, after investigation, a contracting agency determines that no qualified certified business enterprise is available:

(1) the contracting agency must so notify the Office before signing a lease or awarding a concession contract, unless the Office has waived notification based on the known unavailability of qualified certified businesses to perform a particular contract; and

(2) the Office may attempt to identify qualified certified business enterprises and, if successful, must notify the contracting agency of their availability.

(d) *Opportunity to bid.*

The contracting agency must provide the minority and women's business enterprises every practical opportunity to submit bids.

(e) *Concession subcontractors and suppliers.*

- (1) All requests for concession bids must require concessionaires to make every good faith effort to utilize minority and women's business enterprises as subcontractors and suppliers, whenever possible, if subcontractors are used.
- (2) Concession bidders must be required to submit their projected utilization of minority and women's business enterprises along with a description of the efforts made to utilize those businesses.

(Ord. 00-098.)

§ 28-50. Other services.

(a) *Efforts required.*

All City agencies, commissions, and boards, in the deposit of funds and performance of their other official duties, must make every good faith effort to equitably utilize the services of minority and women's business enterprises.

(b) *Scope.*

The services to which this section applies include, but are not limited to:

- (1) the financial services of banks, savings and loan companies, insurance companies, and other commercial financial institutions;
- (2) arrangements for travel and accommodations when traveling on official City business; and
- (3) legal services.

(c) *Annual reports.*

- (1) All City agencies must submit to the Office, on an annual basis, a written report on the efforts made under this subsection.
- (2) The City Finance Department, City Comptroller, and Retirement Boards must report annually to the Mayor and City Council on their utilization of financial institutions that are minority or women's business enterprises.

(Ord. 00-098.)

§28-51. {Reserved}

§ 28-52. All contracts — In general.

In addition to any other applicable requirements, the following requirements apply to all contracts awarded by the City.

(Ord. 00-098.)

§ 28-53. All contracts — Bid specifications.

Bid conditions, requests for proposals, and all other specifications for contracts awarded by the City must require that, where a contract goal is applicable, the bidder must:

- (1) make good faith efforts before the opening of bids or submission of proposals to meet the contract goal; and
- (2) keep records of its good faith efforts, adequate to permit a determination of compliance with this subtitle.

(Ord. 00-098; Ord. 07-606.)

§ 28-54. All contracts — Contract specifications.

Each contract must:

- (1) incorporate this subtitle by reference;
- (2) provide that the failure of any bidder, contractor, or subcontractor to comply with this subtitle is a material breach of contract; and
- (3) require that, during its term, the contractor will:
 - (i) fulfill Program commitments submitted with the bids;
 - (ii) continue to make good faith efforts to utilize minority and women's business enterprises; and
 - (iii) maintain records reasonably necessary for monitoring compliance with this subtitle.

(Ord. 00-098; Ord. 07-606.)

§ 28-55. All contracts — Payments to subcontractors.

(a) *In general.*

A contractor must pay its subcontractors in a timely fashion for satisfactory work.

(b) *When payment considered timely.*

A payment is timely if it is mailed, delivered, or transferred to a subcontractor no later than 7 calendar days after the contractor receives payment from the City.

(c) *Evidence of compliance.*

Beginning with the second pay request from a contractor to the City, the contractor must provide the City with evidence that all subcontractors have been paid out of the proceeds of the prior payment, unless a bona fide dispute, documented in writing, exists between the contractor and the unpaid subcontractor.

(Ord. 00-098; Ord. 07-606.)

§ 28-56. All contracts — Reports and documentation.

As a condition of each contract, the awardee of the contract must submit the following when requested by the Office:

- (1) copies of signed agreements with the business enterprises being utilized to achieve the contract goals;
- (2) reports and documentation verifying payments to the business enterprises being used to achieve the contract goals; and
- (3) reports and documentation on the extent to which the contractor has awarded subcontracts to minority and women's business enterprises under contracts not affected by this subtitle.

(Ord. 00-098.)

§§ 28-57 to 28-60. {Reserved}

PART VII. WAIVERS

§ 28-61. Agency's pre-solicitation request.

(a) *In general.*

A contracting agency may request that the Office waive or reduce the contract goals by submitting the reasons for the request in writing before bids are solicited.

(b) *Criteria for granting.*

The Office may grant the waiver or reduction if the Office determines that:

- (1) the reasonable and necessary requirements of the contract render subcontracting or other participation of businesses other than the bidder infeasible; or
- (2) at least 2 qualified certified business enterprises capable of providing the goods or services required by the contract are unavailable in the Baltimore City Market Area despite every feasible attempt to locate them.

(c) *Amount to be specified.*

Any reduction granted by the Office must specify the amount to which the goal has been reduced.

(d) *Appeal of denial.*

(1) Whenever the Office denies a request to waive or reduce a goal, the contracting agency may appeal that denial to the Board of Estimates.

(2) The Board's decision on the request is final.

(Ord. 00-098; Ord. 07-606.)

§ 28-62. Bidder's pre-award request.

(a) *In general.*

If a bidder is unable to comply with the contract goals, the bidder may submit a request for a waiver at the time of bid opening.

(b) *Documentation of efforts.*

The request for a waiver must include documentation that demonstrates the bidder's good faith efforts to meet the goals.

(Ord. 00-098; Ord. 07-606.)

§ 28-63. Contractor's post-award request.

(a) *Effort to substitute required.*

(1) If, after award of a contract, the contractor is unable to meet any contract goal by utilizing the certified business enterprises specified at bid opening, the contractor must seek a substitute certified business enterprise to fulfill its commitment.

(2) The Office may approve the substitution only after consulting with the Mayor's Office of Minority and Women's Business Development.

(b) *Request for waiver.*

(1) If, after reasonable good faith efforts, the contractor is unable to find a substitute, the contractor must request a post-award waiver.

(2) A contractor may not substitute an MBE or WBE subcontractor or perform the work designated for an MBE or WBE subcontractor with its own forces unless the Chief, after consulting with the contracting agency, approves the substitution in writing.

(c) *Documentation of reasons.*

(1) The request must be in writing and document the reasons for the contractor's inability to meet the contract goal.

(2) The contractor must negotiate with the MBE or WBE subcontractor to resolve the problem.

- (3) The Chief's final decision to permit or deny a proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the Chief.
- (4) Where the contractor has established the basis for a substitution to the satisfaction of the Chief, the contractor must make good faith efforts to achieve the goals. The contractor may seek the assistance of the Office in obtaining a new MBE or WBE. If the contract goals cannot be reached and good faith efforts have been made, the contractor may substitute with a non-certified business.

(Ord. 00-098; Ord. 07-606; Ord. 14-265.)

§ 28-64. Waiver by agency.

(a) *In general.*

A contracting agency may waive the utilization requirements for a specific contract as provided in this section.

(b) *Sole source.*

The agency may waive the utilization requirements if, with the advice of the Office, it finds that:

- (1) needed goods or services are available only from a sole source; and
- (2) the prospective contractor is not currently disqualified from doing business with the City.

(c) *Emergency.*

The agency may waive the utilization requirements if it certifies in writing to the Office that:

- (1) an emergency exists that requires goods or services to be provided with such an immediacy that the agency is unable to comply with this subtitle; and
- (2) the prospective contractor will make every good faith effort to subcontract to minority and women's business enterprises if subcontracting is utilized.

(Ord. 00-098.)

§ 28-65. {Reserved}

PART VIII. AGENCY'S DUTIES

§ 28-66. In general.

Each contracting agency must take the following actions to ensure that MBEs and WBEs have maximum opportunity to participate on City contracts.

(Ord. 00-098.)

§ 28-67. Adherence to bid procedures, etc.

Every contracting agency must ensure that invitations to bid or requests for proposals emanating from the agency comply with this subtitle.
(Ord. 00-098.)

§ 28-68. Responsibility for achieving goals.

Each agency head or designee must:

- (1) assume primary responsibility for achieving the goals of the Program; and
- (2) on a continuing basis, review all aspects of the Program's operations to assure that the purpose is being attained.

(Ord. 00-098.)

§ 28-69. Advertisements, notices, etc.

(a) *Media advertisements.*

Advertisements for bids must appear in minority-owned media no less than 10 days before bids are due for specific contracting opportunities.

(b) *Notices to trade associations.*

A written notification of contracting opportunities must be sent to minority and women's business trade associations and contractor's associations no less than 10 days before bids are due.

(c) *Solicitation materials.*

All contract solicitations must include the MBE/WBE policy and any related materials required by the bid documents.

(Ord. 00-098.)

§ 28-70. Contract division.

All contracting opportunities must be evaluated in an effort to divide the total requirements of a contract to provide reasonable opportunities for participation by minority and women's business enterprises.
(Ord. 00-098.)

§ 28-71. Payment procedures.

Each contracting agency must establish procedures to ensure that:

- (1) all contractors who submit correct invoices are paid within 30 days; and

(2) all subcontractors are paid within 7 days after the City pays the general contractor.
(Ord. 00-098.)

§ 28-72. Conditioning notice to proceed.

Each contracting agency must establish guidelines to ensure that a notice to proceed is not issued until the contracting agency has received copies of all documents needed to evidence the contractor's fulfillment of its commitments under this subtitle.
(Ord. 00-098.)

§ 28-73. Documentation.

Each contracting agency must submit to the Office all statistics and documentation that the Office requests.
(Ord. 00-098.)

§§ 28-74 to 28-75. {Reserved}

PART IX. CERTIFICATION

§ 28-76. Required before bid opening.

(a) In general.

For the purposes of determining compliance with contract goals, a business enterprise may be counted as an MBE or WBE only if it has been so certified by the Office before bid opening.

(b) Effect on participation amount.

If a business listed in a bidder's Information and Utilization Commitment Form has not been certified, the amount of participation will be deducted from the total MBE or WBE utilization in determining whether the bidder is responsive.
(Ord. 00-098.)

§ 28-77. {Repealed}

§ 28-78. MBEs and WBEs — General criteria.

(a) General eligibility requirements.

To be eligible for certification as a minority business enterprise or women's business enterprise, the business enterprise must:

- (1) be an independent, operating business;
- (2) be at least 51% minority- or women-owned;
- (3) before applying for certification, have been in operation for at least 12 months before applying for certification;

(4) have been minority- or women-owned for at least 12 months before applying for certification; and

(5) have an operating office in the Baltimore City Market Area.

(b) *Operating office.*

To determine whether the business enterprise has the required operating office, the Office will consider the office arrangements, industry practices, and other relevant factors.

(Ord. 00-098; Ord. 07-606; Ord. 08-063.)

§ 28-79. MBEs and WBEs — Control.

(a) *In general.*

(1) The ownership and control by minorities or women must be:

(i) real and substantial; and

(ii) indicated by the customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.

(2) The minority or women owners must possess the power:

(i) to direct or cause the direction of the management and policies of the business enterprise; and

(ii) to make day-to-day decisions, as well as decisions on matters of management, policy, and operations.

(b) *Restrictions precluded.*

(1) The business enterprise may not be subject to any formal or informal restrictions that limit the customary discretion of the minority or women owners.

(2) There may not be any restriction, whether by partnership agreement, charter requirements, or other arrangement, that prevents the minority or women owners from making business decisions without the cooperation or vote of any owner who is not a minority or a woman.

(c) *12-month prerequisite.*

The operating arrangements and the ownership and control by the minority group members must have been in operation for at least 12 months before applying for certification.

(Ord. 00-098.)

§ 28-80. MBEs and WBEs — Size standards.**(a) Board to set standards.**

- (1) With the advice of the Office, the Board of Estimates may establish maximum size standards for minority and women's business enterprises.
- (2) There may be separate size standards for separate business categories.
- (3) The Board of Estimates must annually review any size standards established under this section.

(b) Certification contingent.

A business enterprise may not be certified as an MBE or WBE or, once certified, have its certification renewed if, on the effective date of the application or renewal, the MBE or WBE no longer meets size standards established under subsection (a) of this section.

(Ord. 00-098; Ord. 07-606.)

§ 28-81. Certification investigations.**(a) In general.**

The Office may investigate a business enterprise's ownership, management, qualifications, and other relevant matters beyond formal documentation:

- (1) at the initial certification; and
- (2) during certification or recertification.

(b) Scope.

To the extent reasonably necessary to ensure compliance, these investigations may include, but are not limited to:

- (1) personal interviews with persons having knowledge or relevant information relating to a business enterprise's eligibility, certification, or decertification;
- (2) personal interviews with bidders, contractors, vendors, or suppliers involved in a joint venture or contractual relationship with the business enterprise;
- (3) reviewing records pertaining to certification; and
- (4) conducting random, on-site visits, audits, or relevant inquiries.

(Ord. 00-098.)

§ 28-82. Decertification.

The Office may decertify a business that it determines no longer meets the certification criteria.
(Ord. 00-098.)

§ 28-83. Certification appeals.**(a) Office determinations.**

All adverse certification determinations by the Office must:

- (1) be in writing;
- (2) include the reasons for the determination; and
- (3) be sent to the affected business enterprise.

(b) Appeal.

- (1) An aggrieved party has a right to protest an adverse certification determination and seek administrative review.
- (2) To obtain administrative review, the aggrieved party must submit a written protest to the Chief within 7 days of receipt of the adverse determination.
- (3) The protest must specify the reasons and factual grounds of the protest and be accompanied by any supporting documents.

(c) Action by Chief.

Within 25 days of receipt of the protest, the Chief must:

- (1) review the protest and all relevant supporting documents; and
- (2) render a written decision that includes the reasons for the decision.

(d) Hearing.

- (1) After all departmental remedies have been exhausted, the aggrieved applicant may request a hearing before a panel of independent hearing officers, with 1 member of the panel being appointed by the President of the City Council and the other members of the panel being appointed by the City Solicitor.
- (2) The hearing officer must be knowledgeable of Baltimore City procurement laws and procedures, including this subtitle.

(Ord. 00-098; Ord. 07-606.)

§§ 28-84 to 28-85. {Reserved}

PART X. ENFORCEMENT**§ 28-86. Office to monitor compliance.**

During the term of a contract subject to this subtitle, the Office must monitor continued compliance with this subtitle.

(Ord. 00-098.)

§ 28-87. Noncompliance - Contractor or subcontractor.***(a) Notice and attempt to resolve.***

If the Office finds cause to believe that a contractor or subcontractor has failed to comply with any requirement of this subtitle or with any contract provision relating to utilization under this subtitle, the Office must:

- (1) so notify the contracting agency and the contractor; and
- (2) attempt to resolve the noncompliance through conciliation.

(b) Referral to Board of Estimates.

- (1) If the noncompliance cannot be resolved, the Office and the contracting agency must submit written findings and recommendations to the Board of Estimates.

- (2) The Board of Estimates may impose sanctions in accordance with Part XI of this subtitle.

(Ord. 00-098.)

§ 28-88. Noncompliance - Agency.***(a) Notice and attempt to resolve.***

If, after investigation, the Office finds that a contracting agency has failed to comply with a provision of this subtitle, the Office must:

- (1) send the agency a written finding that specifies the nature of the noncompliance; and
- (2) attempt to resolve the noncompliance through conference and conciliation.

(b) Referral to Board of Estimates.

- (1) If the noncompliance cannot be resolved, the Office must submit its written findings and recommendations to the Board of Estimates.

- (2) the Board of Estimates may take appropriate action to secure compliance.

(Ord. 00-098.)

§ 28-89. Office may require reports, etc.

The Office may require contractors, bidders, contracting agencies, and the head of any City agency to submit any reports, documents, or other information reasonably necessary to determine compliance with this subtitle.

(Ord. 00-098.)

§ 28-90. Agencies to keep records.

(a) *Records required.*

A contracting agency must keep accurate records for each contract it awards.

(b) *Contents.*

These records must include:

- (1) dollar value of contract;
- (2) nature of goods or services to be provided;
- (3) name of contractor;
- (4) efforts employed to solicit bids from certified minority and women's business enterprises; and
- (5) all subcontracts awarded by the contractor, identifying for each:
 - (i) dollar value;
 - (ii) nature of goods or services provided;
 - (iii) name of subcontractor; and
 - (iv) race/ethnicity and sex of subcontractor's owner.

(Ord. 00-098.)

§ 28-91. Annual report.

(a) *Report required.*

The Office must submit an annual report to the Mayor and the City Council on the City's progress toward the utilization goals established under this subtitle.

(b) *Contents.*

The report must include:

(1) any problems; and

(2) specific recommendations for improving the City's performance.

(Ord. 00-098.)

§§ 28-92 to 28-95. *{Reserved}*

PART XI. PENALTIES

§ 28-96. Administrative penalties.

A contractor who fails to comply with any provision of this subtitle is subject to any or all of the following penalties:

(1) suspension of contract;

(2) withholding of funds;

(3) rescission of contract based on material breach;

(4) refusal to accept a bid;

(5) disqualification of a bidder, contractor, or other business from eligibility for providing goods or services to the City for a period not to exceed 2 years; and

(6) payment of liquidated damages.

(Ord. 00-098.)

§ 28-97. *{Reserved}*

§ 28-98. Criminal penalties.

(a) *Prohibited conduct.*

No person may:

(1) fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain certification under this subtitle;

(2) in any matter administered under this subtitle, willfully falsify, conceal, or cover up by a trick, scheme, or device a material fact or make any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry;

(3) willfully obstruct, impede, or attempt to obstruct or impede an authorized official or employee who is investigating the qualifications of a business enterprise that has requested certification under this subtitle;

(4) fraudulently obtain, attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain public money to which the person is not entitled under this subtitle;
or

- (5) make a false statement to any person or entity that another person or entity is or is not certified under this subtitle.

(b) *Penalties.*

Any person who violates any provision of this section is guilty of a misdemeanor and, on conviction, is subject to imprisonment for not more than 1 year, to a fine of not more than \$1,000, or to both imprisonment and fine.

(Ord. 00-098.)